

William Craven  
FAS East Precinct Parking 12<sup>th</sup> Ave Arts ATT 6  
August 16, 2012  
Version #1

## Attachment 6 FAS East Precinct Parking 12<sup>th</sup> Avenue Arts Ordinance

## SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT (the “*Sublease*”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2012, between TWELFTH AVENUE ARTS MASTER TENANT LLC, a Washington limited liability company (“*Master Tenant*”), and THE CITY OF SEATTLE, a municipal corporation of the State of Washington (“*Subtenant*”).

### RECITALS

A. CH Development Association, a Washington nonprofit corporation (“*CHDA*”), is the tenant under that certain Ground Lease Agreement dated \_\_\_\_\_, 2012 (the “*Ground Lease*”), between CHDA as lessee and The City of Seattle as lessor (“*Lessor*”), concerning the premises legally described on the attached Exhibit A (“*Premises*”).

B. CHDA subleased its interests in the Ground Lease to Twelfth Avenue Arts Associates, a Washington nonprofit corporation (“*QALICB*”), pursuant to that certain Ground Sublease Agreement dated \_\_\_\_\_, 2012 (the “*Ground Sublease*”).

C. QALICB entered into a Master Lease Agreement with the Master Tenant dated \_\_\_\_\_, 2012 (the “*Master Lease*”), wherein QALICB subleased the Premises and certain other real property to the Master Tenant.

D. Master Tenant desires to sublease to Subtenant, and Subtenant desires to sublease from Master Tenant, the Premises. Copies of the Ground Lease, the Ground Sublease and the Master Lease, along with all amendments thereto, are attached hereto as Exhibit B.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Master Tenant and Subtenant hereby agree as follows:

### 1. BASIC SUBLEASE PROVISIONS.

- a. **Premises.** Master Tenant subleases to Subtenant and Subtenant subleases from Master Tenant the Premises, which consists of the entire Garage.
- b. **Sublease Commencement Date.** The Sublease shall commence on such date Subtenant occupies the Premises following completion of the Improvements (as defined in the Ground Lease) (the “*Sublease Commencement Date*”).
- c. **Sublease Termination Date.** The Sublease shall terminate on \_\_\_\_\_, 2052.
- d. **Rent.** Commencing on the Sublease Commencement Date, Subtenant shall pay to Master Tenant total monthly rent of \$14,583.33 per month, subject to abatement as described herein. The amount of monthly rent shall increase by \$416.67 on the first business day of each January, commencing in January 2016. Rent shall be

payable at Master Tenant's address shown below, or such other place designated in writing by Master Tenant.

**e. Notice and Payment Addresses:**

Master Tenant:	Twelfth Avenue Arts Master Tenant LLC c/o Capitol Hill Housing Improvement Program 1406 10th Avenue, Suite 101 Seattle, WA 98122 Attn. David Dologite
Subtenant:	The City of Seattle Seattle Municipal Tower 700 5th Avenue, Suite 4350 P.O. Box 94669 Seattle, WA 98124-4669 Attn. Director, Finance and Administrative Services

**2. PREMISES.**

**a. Lease of Premises.** Master Tenant subleases to Subtenant, and Subtenant subleases from Master Tenant the Premises upon the terms specified in this Sublease.

**b. Acceptance of Premises.** Except as specified elsewhere in this Sublease, Master Tenant makes no representations or warranties to Subtenant regarding the Premises, including the structural condition of the Premises and the condition of all mechanical, electrical, and other systems on the Premises.

**3. TERM.** The term of this Sublease shall commence on the Sublease Commencement Date provided in Section 1(b) above and shall terminate on \_\_\_\_\_, 2052 (the "***Term***"). Upon the Sublease Commencement Date, Master Tenant and Subtenant shall execute a certificate setting forth the actual Sublease Commencement Date in the form attached hereto as Exhibit C.

**4. RENT.** Subtenant shall pay Master Tenant without demand, deduction or offset, in lawful money of the United States, the monthly rental stated in Section 1(d) in advance on or before the first day of each month during the Term beginning on the Sublease Commencement Date. Payments for any partial month at the beginning or end of the Term shall be prorated. All payments due to Master Tenant under this Sublease, including late fees and interest, shall be rent, and upon failure of Subtenant to pay any such costs, charges or expenses, Master Tenant shall have the same rights and remedies as otherwise provided in this Sublease for the failure of Subtenant to pay rent. Notwithstanding the foregoing, Subtenant's obligation to pay rent in any month after the first month in which rent is due hereunder will be reduced by an amount equal to any shortfall in the amount of rent Subtenant actually receives for the immediately preceding month pursuant to Section 5.1 of the Ground Lease. By way of example, if Lessor

receives \$7,000.00 as rent under Section 5.1 of the Ground Lease during March 2015, then Subtenant's rent under this Section 4 for April 2015 will be \$13,250.00 (*i.e.* \$14,583.33 minus \$1,333.33). In the event that, at the end of the Term, the Subtenant would have received a rent abatement under this Section for the following month (*i.e.* had this Sublease continued to be in effect), the Master Tenant shall pay Subtenant the amount of such foregone abatement as a refund of overpaid rent.

5. **LEASE DOCUMENTS.** Master Tenant represents and warrants to Subtenant that: (a) Master Tenant has delivered to Subtenant a full and complete copy of the Ground Lease, the Ground Sublease and the Master Lease (collectively, the "***Lease Documents***"); and (b) the Lease Documents are in full force and effect and have not been further assigned, supplemented or modified. Master Tenant covenants and agrees to timely pay monthly rent and additional charges under the Master Lease (so long as Subtenant timely pays the monthly rent and additional charges due under this Sublease). Subtenant represents and warrants to Master Tenant that it has read, and is familiar with, the terms of the Lease Documents. Master Tenant and Subtenant shall not, by their omission or act, do nor permit anything to be done that would cause a default under the Lease Documents.
6. **RESTRICTED USES.** Subtenant shall not use nor permit the use of any portion of the Premises: (i) as a private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises; (ii) for the rental to others of residential rental property as defined in Section 168(e)(2)(A) of the Internal Revenue Code of 1986, as amended (the "***Code***"), to the extent such rental would cause any building or structure in or constituting the Premises to be "residential rental property" as defined in Section 168(e)(2)(A)(i) of the Code; (iii) for any trade or business the principal activity of which is farming within the meaning of Section 2032A(e)(5)(A) of the Code; (iv) as an adult bookstore or facility selling or displaying pornographic books, literature, videotapes or other medium (materials shall be considered "adult" or "pornographic" for such purposes if the same are not available for sale or rental to children under 18 years old because they explicitly deal with or depict human sexuality); or (v) for any other trade, business or activity described and prohibited to be carried on in Section 1397C(d)(5) of the Code and Section 45D of the Code. This Section 6 shall have no further force an effect as of the day immediately following the seventh anniversary hereof.
7. **ADDITIONAL CHARGES.** Subtenant shall pay all costs of operating the Premises; provided, however, Subtenant shall have no obligation to pay any leasehold excise tax assessed against the Property or as a result of the rent payable hereunder, it being understood that Subtenant is not assuming those obligations of Master Tenant under the Master Lease. Subtenant shall pay to Master Tenant (or directly to the applicable party, as applicable) the share payable with respect to the Premises for [any costs] relating to any reciprocal easement agreement between the Premises, the Commercial Unit and the Housing Unit.

8. **ALTERATIONS.** Subtenant may not make alterations, additions or improvements to the Premises (“*Alterations*”), without the prior written consent of Master Tenant and Lessor, which consent shall not be unreasonably withheld, conditioned or delayed. Subtenant shall perform all work within the Premises at Subtenant’s expense in compliance with all applicable laws and shall complete all Alterations in accordance with plans and specifications reasonably approved by Master Tenant and Lessor, using contractors approved by Master Tenant and Lessor, and in a manner so as to not unreasonably interfere with other tenants. Master Tenant shall cooperate with and reasonably assist in obtaining any consent from Lessor required for such alterations. Subtenant shall pay, when due, all claims for labor or materials furnished to or for Subtenant at or for use in the Premises, which claims are or may be secured by any mechanics’ or materialmens’ liens against the Premises or any interest therein. Subtenant shall be deemed the owner of all Alterations.
9. **REPAIRS AND MAINTENANCE.** Subtenant shall be responsible for any repairs and replacements, whether structural or nonstructural, ordinary or extraordinary, necessary to maintain the Premises, unless such repairs and replacements arise out of or are related to the negligence or misconduct of the Master Tenant or its officers, employees and agents. Subtenant will permit no waste, damage, or injury to the Premises. Subtenant shall keep the Premises in good and safe condition, in compliance with all applicable laws, codes and regulations, and in good order and repair, ordinary wear and tear and damage by fire, casualty or condemnation which Subtenant is not required to restore elsewhere hereunder excepted, and Subtenant shall conform to and comply with the Condominium Documents and all valid ordinances, regulations and laws affecting the Premises or any improvements thereon or the use thereof.
10. **ACCESS AND RIGHT OF ENTRY.** Subtenant acknowledges the Premises is a unit within a multi-level condominium, which is governed by that certain “Condominium Declaration for 12th Avenue Arts, a condominium” dated \_\_\_\_\_, 2012 and filed with the King County Recorder under Recorder’s No. \_\_\_\_\_ (the “*Declaration*”), and hereby agrees to permit the condominium association and its agents or employees to enter the Premises, following notice in accordance with Article 9 of the Declaration and in compliance with Seattle Police Department access and security policies and procedures, to effect repairs, improvements, replacements, maintenance or sanitation work deemed by the board of directors of the condominium to be necessary in the performance of its duties, to do necessary work that the owner of a condominium unit has failed to perform, or to prevent damage to the common elements of the condominium or to the other condominium units.
11. **INSURANCE.** Subtenant shall procure and maintain, at its own cost and expense, such liability insurance as is required to be carried by QALICB under the first paragraph of Section 13 of the Ground Lease, naming Master Tenant and Lessor as additional insureds. Subtenant shall furnish to Master Tenant a certificate of Subtenant’s insurance required hereunder not later than ten (10) days prior to Subtenant’s taking possession of the Premises. Notwithstanding the foregoing, Subtenant shall have the right to self-insure.

- 12. ASSIGNMENT AND SUBLETTING.** Subtenant shall not assign, sublet, encumber or otherwise transfer any interest in this Sublease or any part of the Premises (collectively referred to as a “*Transfer*”), without first obtaining the written consent of Master Tenant, which shall not be unreasonably withheld, conditioned or delayed. Master Tenant may condition its consent on obtaining any required consent from Lessor, Subtenant satisfying any conditions on the Transfer imposed by Lessor, and such other reasonable conditions that Master Tenant may impose. No Transfer shall relieve Subtenant of any liability under this Sublease notwithstanding Master Tenant’s consent to such Transfer. Consent to any Transfer shall not operate as a waiver of the necessity for Master Tenant’s consent to any subsequent Transfer. In connection with each request for consent to a Transfer, Subtenant shall pay the reasonable cost of processing same, including attorneys fees and any cost charged by Lessor for granting its consent under the Master Lease, upon demand of Master Tenant. In connection with any Transfer, Subtenant shall provide Lessor and Master Tenant with copies of all assignments, subleases and assumption instruments.
- 13. HOLDOVER.** If Subtenant shall, without the prior written consent of Master Tenant, hold over after the expiration or termination of the Term, such tenancy shall be deemed to be on a month-to-month basis and may be terminated according to Washington law. Unless a different rate is agreed upon by Master Tenant, Subtenant agrees to pay to Master Tenant 150% the rate of rental last payable under this Sublease during such holdover tenancy. In addition, Subtenant shall be responsible for all damages incurred by Master Tenant in connection with Subtenant’s holdover. All other terms of this Sublease shall remain in effect.
- 14. NOTICES.** Any notice required or allowed by this Sublease shall be in writing and shall be (i) hand-delivered, effective upon receipt, or (ii) sent by United States Express Mail or by private overnight courier, effective upon receipt, or (iii) served by certified mail, postage prepaid, return receipt requested, deemed effective on the day of actual delivery as shown by the addressee’s return receipt or the expiration of three (3) business days after the date of mailing, whichever is earlier; addressed to the party intended to receive the same at the address set forth in Section 1(e) of this Sublease.
- 15. RIGHT TO PERFORM.** If Subtenant shall fail to pay any sum of money required to be paid by it hereunder or shall fail to perform any other act on its part to be performed hereunder, and such failure shall continue for ten (10) days after notice thereof by Master Tenant, Master Tenant may, but shall not be obligated so to do, and without waiving or releasing Subtenant from any obligations of Subtenant, make such payment or perform any such other act on Subtenant’s part to be made or performed as provided in this Sublease.
- 16. GENERAL.**
- a. Heirs and Assigns.** This Sublease shall apply to and be binding upon Master Tenant and Subtenant and their respective heirs, executors, administrators, successors and assigns.

- b. Entire Agreement.** This Sublease contains all of the covenants and agreements between Master Tenant and Subtenant relating to Subtenant's sublease of the Premises from Master Tenant. No prior or contemporaneous agreements or understanding pertaining to the Sublease shall be valid or of any force or effect and the covenants and agreements of this Sublease shall not be altered, modified, or added to except in writing signed by Master Tenant and Subtenant.
  - c. Severability.** Any provision of this Sublease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision of this Sublease.
  - d. Governing Law.** This Sublease shall be governed by and construed in accordance with the laws of the State of Washington.
  - e. Authority of Parties.** Each party signing this Sublease represents and warrants to the other that it has the authority to enter into this Sublease, that the execution and delivery of this Sublease has been duly authorized, and that upon such execution and delivery this Sublease shall be binding upon and enforceable against the party on signing.
  - f. No Merger.** The fee title to the Premises and the leasehold estate of Subtenant therein created by this Sublease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title by Lessee or by a third party, by purchase or otherwise.
  - g. Counterparts.** This Sublease may be executed in counterparts, each of which shall be deemed an original, and all of which shall constitute one document. Faxed and electronically scanned signatures shall have the same legal effect as original "ink" signatures.
- 17. EXHIBITS AND RIDERS.** The following exhibits and riders are made a part of this Sublease:
- |           |                                   |
|-----------|-----------------------------------|
| Exhibit A | Legal Description of Premises     |
| Exhibit B | Lease Documents                   |
| Exhibit C | Confirmation of Commencement Date |
- 18. CAPITALIZED TERMS.** Undefined capitalized terms used herein shall have the same meaning as set forth in the Ground Lease.

*[Signatures appear on the following page(s)]*

IN WITNESS WHEREOF, the parties hereto have executed this Sublease as of the day and date set forth below.

MASTER TENANT:

TWELFTH AVENUE ARTS MASTER TENANT  
LLC, a Washington limited liability company

By: [name], its Managing Member

By: \_\_\_\_\_

Name:

Title

SUBTENANT:

THE CITY OF SEATTLE, a municipal corporation  
of the State of Washington

By: \_\_\_\_\_

Title:

STATE OF WASHINGTON )  
 )  
 ) ss.  
COUNTY OF KING )

On this day personally appeared before me \_\_\_\_\_, to me known to be the managing member of TWELFTH AVENUE ARTS MASTER TENANT LLC, a Washington limited liability company, the entity that executed the within instrument and acknowledged the said instrument to be the free and voluntary act and deed of said entity for the uses and purposes therein mentioned and on oath stated that he/she was authorized to execute the same.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington, residing  
at \_\_\_\_\_  
My appointment expires \_\_\_\_\_

STATE OF WASHINGTON )  
 )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of THE CITY OF SEATTLE, a municipal corporation of the State of Washington to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington, residing  
at \_\_\_\_\_  
My appointment expires \_\_\_\_\_

## **EXHIBIT A**

### **Legal Description of Premises**

William Craven  
FAS East Precinct Parking 12<sup>th</sup> Ave Arts ATT 6  
August 16, 2012  
Version #1

**EXHIBIT B**

**Lease Documents**

## EXHIBIT C

### CONFIRMATION OF COMMENCEMENT DATE

Master Tenant: Twelfth Avenue Arts Master Tenant LLC, a Washington limited liability company

Subtenant: The City of Seattle, a municipal corporation of the State of Washington

This Confirmation of Commencement Date (“**Confirmation**”) is made by Master Tenant and Subtenant pursuant to that certain Sublease Agreement dated as of \_\_\_\_\_, 2012 (the “**Sublease**”) between Master Tenant and Subtenant for certain premises located in Seattle, Washington and known as the Garage Unit of 12th Avenue Arts, a condominium (the “**Premises**”). This Confirmation is made pursuant to Section 3(b) of the Sublease. Master Tenant and Subtenant hereby agree that the Sublease Commencement Date is \_\_\_\_\_, 20\_\_\_. This Confirmation is incorporated into the Sublease, and forms an integral part thereof. This Confirmation shall be construed and interpreted in accordance with the terms of the Sublease for all purposes.

MASTER TENANT:

TWELFTH AVENUE ARTS MASTER TENANT  
LLC, a Washington limited liability company

By: [name], its Managing Member

By: \_\_\_\_\_  
Name:  
Title

SUBTENANT:

THE CITY OF SEATTLE, a municipal corporation  
of the State of Washington

By: \_\_\_\_\_  
Title: